

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

REBECCA BROWN, *et al.*,

Plaintiffs,

v.

TRANSPORTATION SECURITY
ADMINISTRATION, *et al.*,

Defendants.

Civil Action No. 2:20-cv-64-MJH-LPL

JOINT DISCOVERY STATUS REPORT

The parties hereby jointly file the following status report on the status of outstanding discovery issues in the above-captioned case.

Following the previous status conference, Cecilia R. Dickson submitted the affidavit required to complete her appointment as E-Discovery Special Master. (Docket 117) Earlier this month, she completed submission of her application for access to Sensitive Security Information (SSI), so that she may review SSI documents in the case, if necessary. The parties expect to schedule a meeting with her in December for advice on the e-discovery issues described below.

Plaintiffs deposed two additional TSA witnesses pursuant to Rule 30(b)(6). On September 20, 2022, TSA Security Operations Training Branch Manager Brandi Phillips testified. On October 19, 2022, TSA Senior Technical Advisor Domenic Bianchini testified. The parties have some disagreements about the sufficiency of Mr. Bianchini's testimony, which Plaintiffs outlined by letter to Defendants on October 27, that will be further addressed once the parties have reviewed the final transcript. If needed, the parties will inform the Court of any unresolved disagreement over the deposition and re-engage in the Magistrate's procedure for handling discovery disputes.

The parties have also continued to confer regarding custodians and search terms, and expect to reach substantial agreement. DEA will conduct searches of 59 airport interdiction group supervisors and supplemental searches of 16 section chiefs for relevant Headquarters components. TSA has proposed to search 57 custodians as a sample from among the Federal Security Directors and Assistant Federal Security Directors for Screening, along with supplemental searches of nine custodians in TSA's training and policies offices, along with general mailboxes for those offices. And on November 9, 2022, DEA and TSA provided detailed responses to plaintiffs' proposed search terms that should allow the parties to finalize those terms shortly. Defendants are exploring tools that may assist with review of the voluminous results expected from the search terms, including technology assisted review (TAR). Plaintiffs are now reviewing Defendants' responses to the proposed search terms.

On October 14, 2022, Plaintiffs served their "Phase 2" discovery requests for documents regarding the named plaintiffs' incidents, and other individual incidents at airports for DEA and TSA since January 2014. Defendants have significant concerns about the burden and proportionality of these Phase 2 discovery requests. It appears to Defendants that Plaintiffs essentially seek every document regarding every time DEA has encountered a passenger at an airport and/or seized cash at an airport, and every time TSA has encountered a passenger with cash at an airport since January 2014. The parties have agreed that Defendants may serve their responses on December 14, 2022. After Defendants explain the complexity and burden of what Plaintiffs are seeking, the parties will confer and assess what is reasonable and how much time will be required.

The parties propose to file another Joint Status Report on January 27, 2023. This should provide sufficient time for the parties to assess the time needed to complete Phase 1 discovery, and hopefully narrow any dispute about the scope of Phase 2 discovery. At that point, the parties expect to be in a position to set a schedule for completion of discovery.

Dated: November 14, 2022

/s/ Dan Alban (by permission)
Dan Alban*
VA Bar No. 72688

Jaba Tsitsuashvili*
DC Bar No. 1601246

Brian Morris*
OH Bar No. 0093530

Anna Goodman*
California Bar No. 329228

INSTITUTE FOR JUSTICE
901 North Glebe Road., Suite 900
Arlington, VA 22203
(703) 682-9320
(703) 682-9321 (fax)
dalban@ij.org
jtsitsuashvili@ij.org
bmorris@ij.org
agoodman@ij.org

Attorneys for Plaintiffs

* Admitted *Pro Hac Vice*

Respectfully submitted,

BRIAN BOYNTON
Principal Deputy Assistant Attorney General

BRIGHAM J. BOWEN
Assistant Director
Civil Division, Federal Programs Branch

/s/ Galen N. Thorp
GALEN N. THORP (VA Bar # 75517)
Senior Trial Counsel
ELIZABETH TULIS (NY Bar)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20530
Tel: (202) 514-4781 / Fax: (202) 616-8460
galen.thorp@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, a true and correct copy of the foregoing document was served via electronic mail upon all counsel of record.

/s/ Galen N. Thorp